

REMARKS

Claims 10, 11, 14 and 18 were previously pending in this application; Claim 10 is independent. Applicant has canceled Claim 14 in this submission, without prejudice.

In the final Office Action dated January 26, 2009, the Examiner has rejected Claims 10, 11 and 14 under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 3,757,979 to Berghahn (hereinafter “Berghahn”) in view of U.S. Patent No. 5,853,833 to Sudo (hereinafter “Sudo ’833”); and the Examiner has further rejected Claim 18 under 35 U.S.C. §103(a) as allegedly unpatentable over Berghahn in view of Sudo ’833 and further in view of U.S. Patent No. 5,723,189 to Sudo (hereinafter “Sudo ’189”).

In response, Applicant has argued that independent Claim 10 recites, *inter alia*, a capsule formed exclusively of cyclic olefin copolymer with an impermeability to moisture of less than 5% fluid loss per year, which is not disclosed or suggested by any of the cited references. Specifically, Applicant has argued that Sudo, which is relied on by the Examiner for the alleged teaching of the capsule formed exclusively of cyclic olefin copolymer, actually teaches a container requiring both cyclic olefin copolymer and an inorganic layer. Furthermore, Applicant has argued that none of the references teach or suggest an impermeability to moisture of less than 5% fluid loss per year, which adds further patentable weight to Claim 10.

In response to the foregoing arguments, the Examiner has contended in the Advisory Action dated April 7, 2009, that “Berghahn does not require an inorganic layer, and Sudo is relied upon for its teaching of cyclic olefin copolymer layer as suitable polymeric material for a container for the stable and sanitary storage of medicine” (*see*, Page 2, Lines 2-5 of the Advisory Action).

Applicant respectfully disagrees with the Examiner's contention, which is inconsistent with the interpretation of Berghahn in the final Official Action. Specifically, the Examiner has switched his interpretation of Berghahn as failing to teach a capsule formed exclusively of cyclic olefin copolymer to failing to teach a capsule formed of cyclic olefin copolymer, and further relied on Sudo for an alleged teaching of cyclic olefin copolymer as a suitable material.

In the first instance, Berghahn only discloses, in a general and open-ended manner, that "this case bottle 5 was molded of high density polyethylene using standard thermo-plastic resin molding techniques". Berghahn does not positively disclose or hint that the case bottle is formed exclusively of high density polyethylene. As a matter of fact, in the molding industry, different kinds of additives may be added to a base resin to implement desirable mechanical strength or structural integrity. Berghahn fails to provide factual support for a capsule formed exclusively of cyclic olefin copolymer.

Furthermore, the Examiner has isolated the teaching of cyclic olefin copolymer from Sudo, notwithstanding the fact that Sudo strictly requires both cyclic olefin copolymer and an inorganic material. Accordingly, the hypothetical combination of Berghahn and Sudo does not result in the product contemplated by the claimed invention.

In addition, Applicant respectfully submits that the combination of Berghahn and Sudo is improper.

Berghahn provides a child-proof closure to a bottle for preventing children from accessing dangerous materials (*see*, Col. 1, Lines 17-21), while still providing accessibility for a physically incapacitated adult to open the bottle (*see*, Col. 1, Lines 22-26). The particular structure of Berghahn, such as defined by Claim 1 of Berghahn, serves

the purpose of preventing children from opening the bottle. On the other hand, Berghahn uses different thermoplastic materials for the safety closure and the bottle to avoid binding between the safety closure and the bottle, so as to allow a physically incapacitated adult to open the bottle. The text at Col. 5, Lines 16-25 of Berghahn reads:

*In some instances when the safety closure 3 and bottle 5 are made of certain thermoplastic resins there is a tendency for the closure and bottle to bind so that it may be difficult to turn the safety closure when it is seated on the bottle. To minimize this, in accordance with the present invention, **different thermoplastic materials may be used for the safety closure and the bottle.** This may take the form of different thermoplastic resins or different grades of the same thermoplastic resin, e.g., high and low density polyethylene.*

An alternative solution disclosed by Berghahn at Col. 5, Lines 26-38 reads:

*As an alternative to or in addition to employing different thermoplastic materials for the safety closure and bottle, the binding effect noted above may be minimized by **incorporation in one or both of said components a slip additive.** In a preferred form of this invention the slip additive is introduced into the thermoplastic material mix used to mold the safety closure prior to molding the same. In this instance it will be necessary to select a slip additive which is stable at relatively high temperatures, e.g., about 500 DEG F since temperatures of this order are reached in molding the safety closure.*

Accordingly, there is no teaching, suggestion, motivation or reasoning for a person of ordinary skill in the art to look into the teachings of Berghahn to provide for the claimed invention, which provides a package for holding fluid material suitable for

preserving a dental implant, wherein the external capsule is formed of a material which ensures a good long time storage and which is not influenced by environmental conditions.

Notwithstanding the lack of teaching, suggestion, motivation or reasoning from the prior art, both Berghahn and Sudo fail to teach cyclic olefin copolymer with an impermeability to moisture of less than 5% fluid loss per year, which features ensures the long time storage of fluid material.

Thus, even assuming the combination of Berghahn and Sudo is proper, the hypothetical combination of Berghahn and Sudo fails to teach or suggest the above distinguishing feature.

In view of the foregoing amendments and remarks, it is firmly believed that the subject application is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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